



From the Parliamentary
Under Secretary of State
for Work and Pensions

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Dear Angela

Thank you for your letter of 27 June on behalf of the Merseyside Asbestos Victims Support Group concerning amendments to the Employers' Liability (Compulsory Insurance) Regulations 1998.

Regulation 4(4) of the Employers' Liability (Compulsory Insurance) Regulations 1998 came into force on 1 January 1999 and compels employers who are required to hold employers' liability (EL) insurance to retain policy certificates for 40 years. The Regulation has no effect on policy information that pre-dated its introduction. There is also no provision for ensuring the preservation of records if a company ceases trading.

The current regulation carries no penalty for non-compliance and therefore is not enforced in practice. Although some stakeholders, including the TUC, have called for a penalty for non-compliance, they recognise that enforcement is not likely to be possible or practical.

It is clear that employers should protect themselves from any potential claims made under their EL insurance. Failure to maintain records has potentially a greater cost to employers than any penalty imposed for failure to comply with regulation.

Advice to business on how to protect against costly claims made against their EL cover would seem the most appropriate way to raise the profile of this issue. Officials at the Department for Work and Pensions will be working with colleagues at the Health and Safety Executive (HSE), who publish guidance in this area, to ensure that the danger of ignoring the potential problems arising from claims for long-tail diseases and the failure to maintain records is made perfectly clear to businesses. The potential for new long-tail diseases to emerge should also not be discounted.

Businesses will continue to be required to hold EL insurance which will enable them to meet the cost of compensation payments made to employees for illness or injury arising from their employment. Estimates of the level of compliance with the requirement for qualifying businesses to hold EL insurance are currently around 99.5 per cent. This figure has been accepted as accurate by the parties that contributed to the consultation.

I am sure you can appreciate that the Government should not retain regulation that so clearly does not achieve the outcomes it was implemented to deliver. Clearly there will always be a problem with tracing some historic EL policies. However, we need to ensure we are in a position where we can be confident that every effort has been made to trace this information. This is why I am keen for officials in the Department to continue to work with all parties involved in the Tracing Code of Practice to improve trace rates. James Purnell has also taken a personal interest in this issue and has discussed areas for further work with Stephen Haddrill, Director General of the Association of British Insurers (ABI).

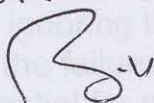
These changes should not be viewed in isolation but as part of a wider programme of work being undertaken in this Department to address the problems in tracing historic EL policies. More information on this work can be found at <http://www.dwp.gov.uk/resourcecentre/tracing-elci-policies.asp>.

The development of the ABI's fast-track mesothelioma tracing system is a welcome development and hopefully this will help claimants to be able to claim compensation sooner.

The Department has made provision for a new mesothelioma lump sum payment scheme in the Child Maintenance and Other Payments Act 2008. This scheme should provide for a lump sum payment for people with mesothelioma within six weeks of claiming. The scheme would be funded by the expansion of the compensation recovery scheme so that payments under the Pneumoconiosis etc (Workers' Compensation) Act 1979 and payments under the new mesothelioma scheme will be recovered if a civil compensation claim is subsequently successful. We are aiming for payments to start later this year.

The amending regulations were laid before both Houses on 4 July and will come into force on 1 October 2008. In the meantime, officials will continue to work with all interested parties to find the best solution possible for claimants.

I trust this reply is helpful.

Yours sincerely


Bill McKenzie